

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

United States of America,

Plaintiff,

v.

CHEMETCO, INC.,

Defendant.

US EPA RECORDS CENTER REGION 5



422174

**No. 00-cv-670-DRH-DGW
00-cv-677-DRH (consolidated)**

**PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, ATTORNEY
GENERAL OF THE STATE OF ILLINOIS**

Plaintiff,

v.

CHEMETCO, INC.,

Defendant.

ORDER

HERNDON, Chief Judge:

Before the Court is the amended joint motion to extend the expiration date of the Interim Order of the plaintiff PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, and the defendant Chemetco Inc. through the Bankruptcy Estate of Chemetco, Inc. (Doc. 115). The motion is hereby **GRANTED** as set forth herein.

1. On September 16, 2008, this Court entered the Interim Order (Doc. 110) to govern certain Work (as defined in the Interim Order) to be undertaken by the Chemetco Estate.

2. This Court has continuing jurisdiction over the subject matter of the Interim Order in accordance with paragraph 69 of that Order. This Court may approve modifications to the Interim Order in accordance with paragraph 76 of that Order. The Parties also have the opportunity to seek modifications of the Interim Order pursuant to FRCP 60(b)(6).

3. The Effective Date of the Interim Order is September 16, 2008. *See* p. 39 of the Interim Order. The Interim Order terminates three years after the Effective Date pursuant to paragraph 46. a. of that Order which makes the expiration date of the Order September 16, 2011.

4. Paragraph 76 of the Order allows modifications of its terms with the written approval of the signatories and the Court. That mechanism was previously employed to make certain accommodations regarding implementation of the Approved Demolition Plan with the modification approved by this Court on July 12, 2010 (Doc. 113).

5. IAD's implementation of the Approved Demolition Plan is now more than eight months past its initially proposed completion date.

6. Both the State and the Estate of Chemetco are in agreement as to the importance of performing the work that is under way but not yet completed under the authority of the Interim Order but note that the Order contemplated that

responsibility for oversight of activities would be transferred from Illinois EPA to US EPA in the wake of the Site being added to the National Priorities List and that a final Consent Decree resolving the pending enforcement cases and governing further remedial actions at the Site would be entered. The extension requested herein is necessary to allow current work to be completed in the context of the applicable Interim Order but also allow for the development of reliable estimates of any additional time necessary to complete activities outstanding under the Approved Work Plans and to submit and approve therequired completion certifications or to incorporate remaining activities into the Final Consent Decree.

7. Work continues to be performed under the Interim Order. Specifically, the demolition of the Foundry Building, Tank House, and American Air Filter (AAF) system at the Chemetco Facility are under way pursuant to the Approved Demolition Plan as attached to the July 9, 2010, Joint Motion to Modify Interim Order as Exhibit A thereto which describes the Approved Demolition Plan. On August 25, 2011, IAD reported that this work should be completed by November 30, 2011 but on September 8, 2011, IAD reported that an unspecified additional amount of time might be required.

8. Work is also being performed to complete the shipment off-site of Pot Slag and Furnace Cleanup Solids to complete a sale previously approved by the Bankruptcy Court under the auspices of the approved Pot Slag and Copper Furnace Clean up Solids Work Plans. All Cupro has been sold under the Cupro Work Plan

and requires a certificate of completion from the IEPA, which is currently being sought.

9. Work is currently being performed to complete the shipment off-Site of 3500 metric tons of Scrubber Sludge to complete a sale previously approved by the Bankruptcy Court under the auspices of the approved Scrubber Sludge Work Plan which includes the sale of scrubber sludge after being loaded into super sacks. This work will be performed diligently to try to complete work prior to November 30, 2011, but additional time may be requested.

10. Work is also currently being performed to complete the Scrap Metals Work Plan. Additional assets may be left to sell after the expiration of this extended Court Order which the parties agree is acceptable and will not be objected to as additional scrap may be available for sale and recycling because of the demolition of the structures previously listed.

11. Currently, the Parties anticipate that the Demolition Work will not be completed by September 16, 2011 but should be substantially completed by November 30, 2011. Certificate of Completion will be sought within 30 days of completing demolition work by agreement of the parties.

12. The parties agree that the implementation of the Demolition Work in accordance with the Approved Demolition Plan provides a substantial benefit to the Chemetco Estate and to the State of Illinois by substantially improving site conditions at the Chemetco Facility and that, therefore, it is appropriate to extend the duration of the Interim Order until completion of the Work under the Approved Demolition Plan.

13. The parties agree that the implementation of the approved Scrap Metals WorkPlan, the Pot Slag Work Plan, the Copper Furnace Clean Up Solids Work Plan, and the Scrubber Sludge Work Plan provides a substantial benefit to the Chemetco Estate and to the State of Illinois by substantially improving site conditions at the Chemetco Facility and earning money for the Estate and that, therefore, it is appropriate to extend the duration of the Interim Order until completion of the Work under these Approved Work Plans as well.

14. If approved by this Court, the parties understand and agree that certificates of completion for the work of the Approved Work Plans may be sought and obtained after the November 30, 2011 date for completing work in the Work Plans. The parties also understand that additional time may be needed to complete all work plans and that such agreement to extend timelines will not be unreasonably withheld if progress is shown toward completion. For example, the sale of facility assets is dependent on market forces as well as diligence in selling and loading the materials. The parties do not intend to curtail the sale of these assets in any way.

15. In order to ensure completion of the Approved Work Plans under the Interim Order, the parties request that the current language of paragraph 46.a. of the Interim Order be replaced with the following language in a new Court Order as proposed:

The Interim Order entered on September 16, 2008 which is said to expire three years hence is hereby extended by agreement of the parties and approval of this Court. The Interim Order will now terminate on November 30, 2011 or such later date as mutually agreed to by the parties and the Court, in writing, in order to allow

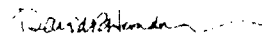
completion of the Work under the Approved Demolition Plan, completion of the off-Site shipment of the Pot Slag, Scrubber Sludge, mixed fines and Furnace Cleanup Solids previously sold with the approval of the Bankruptcy Court in accordance with the Illinois EPA-Approved Work Plans. Certificates of Completion may be sought and obtained after that date as may be necessary and shall remain subject to the terms of the Interim Order.

The parties shall seek Court approval of any extensions agreed to by the Parties under Paragraph 76. As long as it is consistent with the transition of oversight of the Site to US EPA and with the Parties intention to negotiate a final Consent Decree, the Trustee may request additional extensions of this expiration date. Such requests must be based upon accurate and reliable estimates of the time necessary past November 30, 2011 to allow completion of the Work specified above that is being diligently performed. Such requests will be reviewed in accordance with Section XI of the Interim Order.

The Parties shall jointly submit a written status report on the 10th of each month following entry of this Order until the Interim Order is terminated.

IT IS SO ORDERED.

Signed this 14th day of September, 2011.



Digitally signed by
David R. Herndon
Date: 2011.09.14
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**Chief Judge
United States District Court**